

No. PD-1000-20

In the Court of Criminal Appeals of Texas

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No. 14-18-00205-CR
In the Court of Appeals for the
Fourteenth District of Texas at Houston

FILED
COURT OF CRIMINAL APPEALS
2/11/2021
DEANA WILLIAMSON, CLERK

—◆—
No. 1471491
In the 178th Judicial District Court of Harris County, Texas

—◆—
SANTHY INTHALANGSY
Appellant

V.

THE STATE OF TEXAS
Appellee

—◆—
STATE'S BRIEF ON DISCRETIONARY REVIEW

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ORAL ARGUMENT GRANTED

STATEMENT REGARDING ORAL ARGUMENT

Upon granting the State’s petition for discretionary review, this Court determined that it will permit oral argument in this case.

IDENTITY OF THE JUDGE, PARTIES, AND COUNSEL

Pursuant to Texas Rule of Appellate Procedure 38.2(a)(1)(A), a complete list of the names and addresses of all attorneys, and the names of all interested persons, is provided below so that the members of this Honorable Court may at once determine whether they are disqualified to serve or whether they should recuse themselves from participating in the decision of the case.

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Kris (“Jimmy”) Maneerut

Victim in Extraneous Offense:

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The Honorable Reagan Clark—Presiding Judge of the 178th Judicial
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TO THE HONORABLE JUDGES OF THE COURT OF CRIMINAL APPEALS OF TEXAS:

STATEMENT OF THE CASE

The State charged Appellant by indictment with the capital felony offense of capital murder by intentionally causing the death of Kris (“Jimmy”) Maneerut while in the course of kidnapping or attempting to kidnap Sara Cassandra (“Cassie”) Nelson. (CR – 37);¹ *see* TEX. PENAL CODE ANN. § 19.03(a)(2); *see also* TEX. PENAL CODE ANN. § 19.02(b)(1). On March 12, 2018, a jury found Appellant guilty of the offense, as charged. (CR – 354); (RR VI - 99). On March 12, 2018, in accordance with the jury’s verdict, the trial court sentenced Appellant in open court to confinement in the Texas Department of Criminal Justice, Correctional Institutions Division, for life without the possibility of parole. (CR – 356-57); (RR VI – 101-02). The trial court entered an affirmative deadly weapon finding in the court’s written judgment of conviction and sentence, and certified Appellant’s right of appeal. (CR – 356-57, 359); (RR VI – 102). On March 12, 2018, Appellant timely filed written notice of appeal. (CR – 361-62). Appellant did not file a motion for new trial. *See* (CR – 370-71).

¹ The clerk’s record consists of one volume, which will be referenced as (CR – [page number]). The court reporter’s record consists of eight volumes from Appellant’s trial, which will be referenced as (RR [I-VIII] – [page number]), as well as one volume from an abatement hearing. State’s Exhibits admitted at trial will be cited as (SX [exhibit number]).

Pertinent to this Court’s exercise of discretionary review, Appellant complained in his second point of error on appeal to the Fourteenth Court of Appeals that the trial court abused its discretion in admitting the State’s evidence concerning Cassie’s murder—an extraneous offense—in violation of Texas Rules of Evidence 401, 402, and 404(b). *See Inthalangsy v. State*, 610 S.W.3d 138, 144-46 (Tex. App.—Houston [14th Dist.] 2020, pet. granted). Relatedly, Appellant contended in his third point of error that the trial court violated Texas Rule of Evidence 403 when the court admitted the extraneous-offense evidence of Cassie’s murder because the probative value of the evidence was substantially outweighed by the danger of unfair prejudice. *Inthalangsy*, 610 S.W.3d at 146. The Fourteenth Court of Appeals sustained these two points of error, concluded that the admission of the complained-of extraneous-offense evidence was harmful, reversed the trial court’s judgment, and remanded the case for a new trial. *Id.* at 146-48.

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STATEMENT OF PROCEDURAL HISTORY

On September 24, 2020, the Fourteenth Court of Appeals issued a published opinion finding that legally sufficient evidence supports Appellant’s conviction for capital murder, but concluding that the trial court reversibly erred in admitting the State’s extraneous-offense evidence concerning Cassie’s murder. *See Inthalangsy*,

610 S.W.3d at 144-48. Accordingly, the Fourteenth Court of Appeals reversed the judgment of the trial court and remanded the case for a new trial. *Inthalangsy*, 610 S.W.3d at 148. On the same date, then-Justice Tracy Christopher² issued a published dissenting opinion agreeing with the majority that legally sufficient evidence supports Appellant's conviction, but disagreeing with the majority's analysis and conclusions regarding the admissibility of the State's extraneous-offense evidence concerning Cassie's murder. *See Inthalangsy*, 610 S.W.3d at 148-51 (Christopher, J., dissenting).

The State did not file a motion for rehearing or a motion for en banc reconsideration by the Fourteenth Court of Appeals. Rather, in accordance with Texas Rule of Appellate Procedure 68.2(a), the State timely filed a petition for discretionary review with this Court on October 20, 2020. *See* TEX. R. APP. P. 68.2(a). This Court granted the State's petition for discretionary review on January 13, 2021.

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GROUND FOR REVIEW

1. The Fourteenth Court of Appeals misapplied Texas Rules of Evidence 401 and 402 by disregarding evidence connecting Appellant to Cassie's murder and, thus, erroneously concluding that the extraneous-offense evidence of Cassie's murder was irrelevant.

² Since authoring her dissenting opinion, then-Justice Christopher has been elected as Chief Justice of the Fourteenth Court of Appeals.

2. The Fourteenth Court of Appeals erred by failing to consider whether the extraneous-offense evidence of Cassie’s murder was admissible under Texas Rule of Evidence 404(b) for the non-character-conformity purposes of: demonstrating that Appellant restrained Cassie without her consent; showing Appellant’s intent to use deadly force against Cassie to prevent her liberation; and providing same-transaction contextual evidence.
3. The Fourteenth Court of Appeals failed to conduct a meaningful assessment of whether, per Texas Rule of Evidence 403, the probative value of the extraneous-offense evidence of Cassie’s murder was substantially outweighed by the danger of unfair prejudice.

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STATEMENT OF FACTS

On the night of May 1, 2015, and into the following morning, Lindapone (“Linda”) Phanprasa; Appellant, Linda’s boyfriend; and Amalinh Phouthavong held Sara Cassandra (“Cassie”) Nelson captive at Linda’s residence because they blamed Cassie—who had acted as an intermediary between her captors and other drug dealers—for a major drug deal that had gone awry and resulted in a loss of \$70,000. (RR III – 106-07, 111-12, 116); (RR IV – 73-75); *see* (SX 271); *Inthalangsy*, 610 S.W.3d at 141. Beginning at 10:43 AM on May 2, 2015, Cassie sent a series of “panicky” text messages to Ryan Overton—Cassie’s landlord—stating that she was being “held hostage” against her will over a “[h]uge deal gone bad”; that she was in danger and needed assistance; that she was “in the process of giving up [her] boat so [she could] save [her] life”; and asking if Kris (“Jimmy”) Maneerut, Cassie’s boyfriend, was at the garage apartment that Cassie rented from

Ryan. (RR III – 106-16, 132); *see* (SX 271). At 1:55 PM, Cassie texted Ryan, “I’m good[.] I’m getting the Vin [sic] to my boat and then I can come home[.]” *See* (SX 271). Sometime later that afternoon, once Appellant and Cassie’s other captors were apparently satisfied with Cassie’s arrangements to give them “her” boat—which actually belonged to Cassie’s father—to cover the deficit from the drug deal, they released her. (RR III – 106-16, 132); *see* (SX 271); *Inthalangsy*, 610 S.W.3d at 141.

Cassie returned to the garage apartment that she rented from Ryan but, on the morning of May 6, 2015, Ryan evicted Cassie and Jimmy for nonpayment of rent. (RR III – 104-06, 117-19, 128); *see Inthalangsy*, 610 S.W.3d at 141. Cassie and Jimmy collected some of their belongings, left the garage apartment at approximately 10:00 AM, and went to stay on property owned by Frank Garza, Jimmy’s friend, where they later slept overnight in their cars. (RR III – 120, 167-68); *see Inthalangsy*, 610 S.W.3d at 141.

Also on May 6, 2015, Linda, Appellant, and Amalinh began looking for Cassie again because of problems with the title to Cassie’s father’s boat. (RR IV – 76); *see Inthalangsy*, 610 S.W.3d at 141. As part of their search, Linda, Appellant, and Amalinh asked around the neighborhood for Cassie’s and Jimmy’s whereabouts; went by the garage apartment around 4:00 PM and asked Ryan if he had seen them; and, around 10:30 PM, went to Jimmy’s parents’ house and asked

for Cassie. (RR III – 121-24, 130-32); (RR IV – 76, 146-49, 160, 164); *see Inthalangsy*, 610 S.W.3d at 141.

On the morning of May 7, 2015, Frank discovered Jimmy and Cassie asleep in their cars and invited them inside his residence to sleep on the two sofas in his living room; Jimmy and Cassie accepted the offer, moved inside Frank’s home, and went back to sleep on the sofas. (RR III – 169-72); *see* (SX 137); *Inthalangsy*, 610 S.W.3d at 141. While Jimmy and Cassie slept, Frank received a phone call from Sylva (“Monk”) Sengshareun, another drug dealer whom Frank knew from “around the neighborhood” and who sold marijuana and Xanax to Frank. (RR IV – 68, 78). During the call, Monk asked Frank if Jimmy and Cassie were at Frank’s home and told Frank that Linda wanted to talk to Cassie; when Frank answered that Jimmy and Cassie were at his house, Monk asked him not to alert Cassie and Jimmy that Linda was going to come over to talk to Cassie, and then offered to sell Frank some bars of Xanax, which Frank accepted. (RR III – 173-75, 204); (RR IV – 69-70); *Inthalangsy*, 610 S.W.3d at 141. Frank and Monk ended their call and Monk immediately called Linda, told her that Cassie was at Frank’s house, and agreed to lead Linda to the residence. (RR IV – 69-70, 79-80, 117); *see Inthalangsy*, 610 S.W.3d at 141.

When Monk arrived at Frank’s house, he called Frank, who came out and got into Monk’s vehicle. (RR III – 174-75); (RR IV – 84, 118-20). Linda,

Appellant, and Amalinh then pulled up in Linda's Lexus SUV, which Linda backed-in near Frank's fence line. (RR III – 178-79); (RR IV – 82-83, 119-20, 122). As Frank watched, Appellant and Amalinh got out of Linda's vehicle; opened the rear hatch of the SUV and “rummage[ed] around”; made movements like they were putting guns in the back waistbands of their pants; and went into Frank's house. (RR III - 179-80); (RR IV – 86, 123); *Inthalangsy*, 610 S.W.3d at 141. Very soon thereafter, Frank heard a single gunshot and saw Appellant and Amalinh “escort” Cassie from Frank's house to Linda's SUV—each of them walking on either side of her—as Cassie looked dazed and struggled not to cry. (RR III – 183-86, 210-13); (RR IV – 87-88, 124); *Inthalangsy*, 610 S.W.3d at 141. Appellant and Amalinh seated Cassie between them in the backseat of Linda's vehicle, and Linda drove them away. (RR III – 185-87, 212-13); (RR IV – 88-89); *Inthalangsy*, 610 S.W.3d at 141.

Frank got out of Monk's car and returned to his house to find Jimmy “gasping” for breath and bleeding profusely onto the sofa and floor from a single gunshot wound to the middle of his face. (RR III – 188-90); *see* (SX 133-37); *Inthalangsy*, 610 S.W.3d at 141. Frank pulled Jimmy onto the front porch of his house, frantically called 911, and attempted to keep Jimmy on his side to help him breathe while they waited for emergency medical services (EMS) personnel and the police to arrive. (RR III – 190-91); *see Inthalangsy*, 610 S.W.3d at 141. EMS

transported Jimmy to the hospital via LifeFlight, but he died within minutes of his arrival. (RR III – 226-27); *see Inthalangsy*, 610 S.W.3d at 141.

Harris County Sheriff's Office Homicide Detective Mike Jones was assigned to the case and interviewed Frank at Frank's residence later that morning, around 11:00 AM on May 7, 2015. (RR V – 152-54). Upon learning that Cassie had been taken from Frank's home by two male suspects after the shooting, Jones treated Cassie's disappearance as a potential kidnapping and began efforts to try to locate her—including issuing a "be on the lookout" notice for Linda's vehicle, attempting to track Cassie's cell phone, and contacting Ryan. (RR V – 154-76). Jones's efforts were to no avail, however, because, around 8:30 AM on May 8, 2015, Jones received a phone call that some fishermen had found Cassie's body—riddled with bullet holes, including two on her face—hidden in some underbrush beside the San Jacinto River. (RR IV – 227, 232, 237, 241-42); (RR V – 40-56, 178-81); *see* (SX 247, 251); *Inthalangsy*, 610 S.W.3d at 141.

Jones's investigation enabled him to identify Linda and, when Jones discovered that she had an open out-of-county arrest warrant, the police located and apprehended her a few weeks after the murders. (RR IV – 172-76, 188-95). Jones then interviewed Linda, during which Jones learned additional information that led him to Appellant and Amalinh. (RR V – 188-96). Sometime later, at the conclusion of his investigation, Jones sought charges against Appellant, Amalinh,

and Linda for the offense of capital murder. (RR V – 196-99, 210); (RR VI – 29); *see Inthalangsy*, 610 S.W.3d at 141-42.

At trial, Appellant filed a motion *in limine*, seeking to prevent the State from developing extraneous-offense evidence of Cassie’s murder on the grounds that the evidence was irrelevant, and that any probative value that the evidence did have was substantially outweighed by the danger of unfair prejudice. (CR – 301); (RR III – 18-23). The trial court held a pretrial hearing on Appellant’s motion *in limine*, among other matters, and overruled Appellant’s objections, explaining that the State’s proposed extraneous-offense evidence would be admissible as “part of the operative facts of the [charged] offense...” (RR III – 23-24).

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SUMMARY OF THE ARGUMENT

The Fourteenth Court of Appeals erroneously concluded that insufficient evidence established Appellant’s criminal culpability for Cassie’s murder and, thus, that the State’s extraneous-offense evidence concerning that crime was irrelevant. In doing so, the Fourteenth Court of Appeals improperly substituted its own judgment for that of the trial court concerning the relevancy of the evidence and misapplied Texas Rules of Evidence 401 and 402.

Because the Fourteenth Court of Appeals determined—erroneously—that the State’s extraneous-offense evidence related to Cassie’s murder was irrelevant,

the appellate court bypassed the step of assessing whether the State offered the evidence for proper, non-character-conformity purposes, per Rule of Evidence 404(b). However, because the extraneous-offense evidence was relevant, the appellate court should have evaluated whether it was admissible under Rule 404(b), such as to substantiate the elements of kidnapping—the aggravating component of capital murder, as charged—as well as to provide same-transaction contextual evidence.

Concluding that the State’s extraneous-offense evidence was wholly irrelevant, the Fourteenth Court of Appeals assumed that the prejudicial effect of the evidence substantially outweighed its probative value, per Rule of Evidence 403, without conducting a proper, meaningful examination of the Rule 403 factors.

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ARGUMENT FOR FIRST GROUND FOR REVIEW

The Fourteenth Court of Appeals misapplied Texas Rules of Evidence 401 and 402 by disregarding evidence connecting Appellant to Cassie’s murder and, thus, erroneously concluding that the extraneous-offense evidence of Cassie’s murder was irrelevant.

Texas Rule of Evidence 402 provides the basic tenet that relevant evidence is generally admissible, while irrelevant evidence is inadmissible. TEX. R. EVID. 402. Rule of Evidence 401 explains that “[e]vidence is relevant if: (a) it has *any* tendency to make a fact more or less probable than it would be without the

evidence; and (b) the fact is of consequence in determining the action.” TEX. R. EVID. 401 (emphasis added). Consistent with the plain language of this rule, the United State Supreme Court and this Court have expressed that there is a “low threshold for relevance.” *See, e.g., Tennard v. Dretke*, 542 U.S. 274, 284-85 (2004) (explaining that there is a “low threshold for relevance” regarding mitigating evidence, as with other evidence); *Cruz-Garcia v. State*, No. AP-77,025, 2015 WL 6528727, at *19 (Tex. Crim. App. Oct. 28, 2015) (not designated for publication) (discussing “the low threshold for relevance imposed by Rule 401....”); *Ex parte Smith*, 309 S.W.3d 53, 56 (Tex. Crim. App. 2010) (citing *Tennard* for the principle that there is a “low threshold for relevance[.]”).

Rule of Evidence 104(b) provides, though, that “[w]hen the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the fact does exist.” TEX. R. EVID. 104(b). In *Harrell v. State*, 884 S.W.2d 154 (Tex. Crim. App. 1994), this Court explained that, when the evidence at issue is extraneous-offense evidence and the conditional fact at issue is whether the accused committed the extraneous offense, the trial court is required to determine that a jury could find beyond a reasonable doubt that the accused committed the extraneous offense before the court may admit the evidence. *See Harrell*, 884 S.W.2d at 159-61 (“[I]n deciding whether to admit extraneous offense evidence in the guilt/innocence phase of trial, the trial court must, under [R]ule

104(b), make an initial determination at the proffer of the evidence, that a jury could reasonably find beyond a reasonable doubt that the defendant committed the extraneous offense.”). This is so because, “if [the defendant] committed the extraneous offense, the evidence is relevant and admissible, provided it is not too prejudicial and is offered for a proper purpose.” *Harrell*, 884 S.W.2d at 160. Conversely, however, “if [the defendant] did not commit the extraneous offense, the evidence is irrelevant and therefore inadmissible.” *Id.*

In Appellant’s case, the Fourteenth Court of Appeals conceded that “it is easy to imagine a connection between Appellant’s conduct and Cassie’s violent death[.]” *Inthalangsy*, 610 S.W.3d at 146. Despite this acknowledgment, the appellate court nonetheless concluded that the trial court erred in determining that a jury could find beyond a reasonable doubt that Appellant murdered Cassie—either as a principal or party—and, thus, that the trial court erred in finding the State’s extraneous-offense evidence relevant and admissible. *See Inthalangsy*, 610 S.W.3d at 145-46 (concluding that the State’s extraneous-offense evidence of Cassie’s murder was irrelevant because of “[t]he State’s inability to prove Appellant participated in Cassie’s death beyond a reasonable doubt....”). In reaching this conclusion, though, the appellate court failed to consider the ample circumstantial evidence that establishes Appellant’s culpability for Cassie’s murder, and failed to apply the proper, deferential standard of review when

evaluating that evidence. *See Inthalangsy*, 610 S.W.3d at 149 (Christopher, J., dissenting) (explaining that “[t]he majority achieves [the] holding [that Appellant is not connected to Cassie’s murder] by not crediting the reasonable inferences that may be drawn from the circumstantial evidence, in direct contravention of the standard of review.”).

As then-Justice Christopher observed in her dissenting opinion, the record contains abundant evidence from which a jury could conclude beyond a reasonable doubt that Appellant is criminally responsible for Cassie’s murder. This evidence includes the facts that:

- (1) Appellant kidnapped Cassie twice within a span of only a few days;
- (2) Cassie sent “panicky” text messages to Ryan during the first kidnapping, expressing that she was being held hostage and that she feared that her captors, including Appellant, would kill her because of a large-scale, errant drug deal;
- (3) Appellant had a motive to kill Cassie, given that, in addition to the fact that Cassie’s conduct in the drug-deal-gone-wrong had resulted in a \$70,000 deficit to Appellant and his associates, Cassie also secured her release from Appellant and his group during the first kidnapping through the false pretenses of giving them “her” boat to satisfy her debt;

- (4) Appellant and Amalinh were seen with at least one gun when they searched for Cassie between the first and second kidnappings, before Monk tipped-off Linda as to Cassie's and Jimmy's whereabouts;
- (5) Appellant or Amalinh shot Jimmy in the face right in front of Cassie, immediately before they kidnapped her the second time;
- (6) Cassie was seen alive for the last time in Appellant's and Amalinh's company, when Frank saw Appellant and Amalinh "escort" her from Frank's house and seat her between them in the backseat of Linda's vehicle;
- (7) Cassie appeared distressed and struggled to refrain from crying when Frank saw Appellant and Amalinh take her from Frank's residence;
- (8) Cassie's body was found dumped near a river less than 24 hours after Jimmy's murder, and was hidden in underbrush;
- (9) Cassie was killed approximately 12 to 24 hours before her body was discovered, establishing that she was murdered very soon after Jimmy's murder and when Appellant and Amalinh abducted her;
- (10) Appellant had the opportunity to murder Cassie, given that he was with her around the time of her death;
- (11) Cassie died from multiple gunshot wounds and, like Jimmy, was shot in the face; and

(12) Two firearms were used to murder Jimmy and Cassie—a .40-caliber pistol to shoot Jimmy and a .38-caliber or 9mm pistol to shoot Cassie a short time later—which suggests that there were two shooters during this kidnapping and double-murder crime spree that Appellant, Amalinh, and Linda orchestrated.

See (RR III – 106-14, 121-23, 132-34, 179-87); (RR IV – 12-30, 75-76, 86-89, 123, 146-49, 159-60, 227-29, 241-42); (RR V – 40-48, 52, 55-57); (SX 241, 296); *see also Inthalangsy*, 610 S.W.3d at 149 (Christopher, J., dissenting).

In fact, juries have concluded beyond a reasonable doubt that other defendants committed murders based on similar or even less evidence—convictions which have been affirmed for legal sufficiency on appeal by this Court. For example, in *Nisbett v. State*, 552 S.W.3d 244 (Tex. Crim. App. 2018), this Court affirmed a jury’s finding that the defendant murdered his wife—despite that the police never found the victim’s body or a possible murder weapon, and without a confession by the defendant or testimony from an eyewitness to the crime—based on the cumulative force of circumstantial evidence that: the defendant and the victim had a troubled relationship which involved abuse and violence; the defendant had previously made statements that he had thought about killing the victim; the defendant and the victim argued the day before the victim went missing, and the defendant used force against the victim during the altercation; in

the two or three days before the victim disappeared, she was crying and appeared to be “extremely fearful” of the defendant; and investigators found a bloody handprint in the victim’s apartment which corresponded to the victim’s blood and the defendant’s fingerprints. *See Nisbett*, 552 S.W.3d at 247-52, 262-63.

Similarly, in *Ingerson v. State*, 559 S.W.3d 501 (Tex. Crim. App. 2018), this Court affirmed the defendant’s capital murder conviction based on the cumulative force of the circumstantial evidence adduced, including evidence that the defendant had a motive to murder one of the two victims killed; the defendant had the opportunity to kill the victims; the defendant was the last person to see the victims alive; the defendant owned the type of gun and ammunition that was used to kill the victims; and the defendant’s behavior after the murders was suspicious. *See Ingerson*, 559 S.W.3d at 509-11.

As occurred in these cases, any rational jury could conclude beyond a reasonable doubt from the cumulative force of the circumstantial evidence developed, as well as from all possible reasonable inferences that may be deduced from the evidence, that Appellant murdered Cassie as either a principal actor or as a party. Accordingly, the trial court appropriately determined that the State’s extraneous-offense evidence related to Cassie’s murder was relevant and the Fourteenth Court of Appeals improperly substituted its opinion to the contrary over the court’s determination. In other words, the Fourteenth Court of Appeal

misapplied Rules of Evidence 401 and 402 by: (1) finding the State's proof of the conditional fact of Appellant's culpability for Cassie's murder to be legally insufficient, thereby improperly superimposing its judgment over the trial court's relevancy assessment; and (2) holding that the State's extraneous-offense evidence of Cassie's murder was, thus, irrelevant and inadmissible. *See Inthalangsy*, 610 S.W.3d at 149 (Christopher, J., dissenting) (citing *Rogers v. State*, 853 S.W.2d 29, 32-33 (Tex. Crim. App. 1993) (stating that a reviewing court should not superimpose its own judgment over the judgment of the trial court when deciding whether extraneous-offense evidence is relevant)).

This Court should sustain the State's first ground for review.

ARGUMENT FOR SECOND GROUND FOR REVIEW

The Fourteenth Court of Appeals erred by failing to consider whether the extraneous-offense evidence of Cassie's murder was admissible under Texas Rule of Evidence 404(b)(2) for the non-character-conformity purposes of: demonstrating that Appellant restrained Cassie without her consent; showing Appellant's intent to use deadly force against Cassie to prevent her liberation; and providing same-transaction contextual evidence.

From the outset, the State acknowledges that the State's second ground for review is contingent upon this Court's agreement with the State's first ground for review because, if this Court agrees with the Fourteenth Court of Appeals that the extraneous-offense evidence related to Cassie's murder is irrelevant because the record contains insufficient evidence from which a jury could conclude beyond a

reasonable doubt that Appellant is responsible for that crime, then the extraneous-offense evidence is irrelevant, regardless of its intended purpose, and the Fourteenth Court of Appeals did not err in failing to consider whether the evidence served a non-character-conformity purpose per Rule of Evidence 404(b). *See Inthalangsy*, 610 S.W.3d at 145, n.2 (“[W]e...begin with binding authority that dictates when extraneous offenses may be received into evidence and need not go further because our analysis reveals the evidence is not relevant.”). However, if this Court agrees with the State’s assertion that the record sufficiently establishes Appellant’s culpability for Cassie’s murder and, thus, the trial court properly concluded that the extraneous-offense evidence is relevant, then the Fourteenth Court of Appeals erred in skipping the step of evaluating whether the evidence was admissible for a non-character-conformity purpose.

Rule 404(b)(1) establishes that the general principle that evidence of a person’s crime, wrong, or other act is not admissible to prove a person’s character in order to show that, on a particular occasion, the person acted in conformity with their character. TEX. R. EVID. 404(b)(1). Rule 404(b)(2) provides an exception to the general prohibition in Subsection (b)(1) when the extraneous-offense evidence is offered for “another purpose[,]” apart from establishing character-conformity, such as proving motive, intent, preparation, plan, knowledge, identity, absence or mistake, or lack of accident. TEX. R. EVID. 404(b)(2). In addition to these

enumerated non-character-conformity purposes, this Court has long recognized that extraneous-offense evidence “may also be admissible as same-transaction contextual evidence where ‘several crimes are intermixed, or blended with one another, or connected so that they form an indivisible criminal transaction, and full proof...of any one of them cannot be given without showing the others.’” *Devoe v. State*, 354 S.W.3d 457, 469 (Tex. Crim. App. 2011) (quoting *Wyatt v. State*, 23 S.W.3d 18, 25 (Tex. Crim. App. 2000)); see *Rogers*, 853 S.W.2d at 33; *Mayes v. State*, 816 S.W.2d 79, 86 (Tex. Crim. App. 1991). This is so because same-transaction contextual evidence provides background information “to show the context in which the criminal act occurred[,]...under the reasoning that events do not occur in a vacuum and that the jury has a right to hear what occurred immediately prior to and subsequent to the commission of the act so that they may realistically evaluate the evidence.” *Mayes*, 816 S.W.2d at 86 (quoting *Albrecht v. State*, 486 S.W.2d 97, 100 (Tex. Crim. App. 1972)).

In this case, the extraneous-offense evidence related to Cassie’s murder was admissible for several non-character-conformity purposes. First, given the close timeframe between Jimmy’s murder and Cassie’s abduction and murder, Cassie’s murder helped prove that Appellant restrained Cassie without her consent when he and Amalinh “escorted” her away from Frank’s house and seated her between them in Linda’s SUV, which was an essential element of the charged offense and a

contested issue at trial. *See* (CR – 331-32); *Inthalangsy*, 610 S.W.3d at 149 (Christopher, J., dissenting); *see generally Santellan v. State*, 939 S.W.2d 155, 162 (Tex. Crim. App. 1997) (reiterating that “kidnapping becomes a completed offense when (1) a restraint is accomplished, and (2) there is evidence that the actor had the specific intent to prevent liberation by secretion or the use or threatened use of deadly force.”); *Brimage v. State*, 918 S.W.2d 466, 476 (Tex. Crim. App. 1994) (finding that the victim’s restraint and kidnapping “ended only with her death.”).

Second, Cassie’s murder also helped establish that Appellant intended to prevent Cassie’s liberation by using deadly force against her, which was another essential element of the State’s case-in-chief. *See* (CR – 332); *Inthalangsy*, 610 S.W.3d at 149 (Christopher, J., dissenting); *see also Swearingen v. State*, 101 S.W.3d 89, 96-97 (Tex. Crim. App. 2003) (discussing that the defendant’s act of “using what turned out to be deadly force” against the victim contributed to the sufficiency of the evidence establishing that the defendant had kidnapped her); *Reyes v. State*, 491 S.W.3d 36, 46-47 (Tex. App.—Houston [14th Dist.] 2016, no pet.) (finding that, in a capital murder case, the victim’s physical injuries supported the aggravating element of kidnapping that the defendant used deadly force to prevent the victim’s liberation).

And third, because the evidence demonstrated that Jimmy’s murder was intertwined with Cassie’s kidnapping and murder—which occurred soon after

Appellant abducted her—the trial court could have reasonably determined that the extraneous-offense evidence was admissible as same-transaction contextual evidence to enable the jury to realistically evaluate all of the circumstances and facts developed at trial. *Inthalangsy*, 610 S.W.3d at 149 (Christopher, J., dissenting); *see Rogers*, 853 S.W.2d at 33 (explaining that, per the same-transaction-contextual-evidence doctrine, evidence of extraneous matters committed in the same transaction as the charged offense, and offered to place the charged offense in context, is admissible under Rule 404(b) if such evidence is necessary to the jury’s understanding of the charged offense).

This case is similar to *Camacho v. State*, 864 S.W.2d 524 (Tex. Crim. App. 1993). In *Camacho*, Camacho and co-actors went to the home of Sam Wright, who purportedly owed Camacho money from prior drug transactions. *Camacho*, 864 S.W.2d at 527. While Camacho and his cohorts were demanding that Wright repay the \$20,000 debt he owed to Camacho, an employee of Wright arrived at Wright’s house and knocked on the door. *Id.* Camacho let the employee in to Wright’s home and fatally shot him. *Id.* Then, though Wright was able to escape his home and flee, Camacho and his group kidnapped Wright’s wife and son. *Camacho*, 864 S.W.2d at 527. Some days later, Camacho and the members of his group murdered Wright’s wife and son in Oklahoma. *Camacho*, 864 S.W.2d at

527, 531. In Camacho’s trial for the capital murder of Wright’s employee,³ over Camacho’s objections based on Rules of Evidence 404(b) and 403, the State presented evidence of the extraneous offenses involving the kidnapping and murder of Wright’s wife and son. *Camacho*, 864 S.W.2d at 531.

On appeal, this Court held that the extraneous-offense evidence concerning the kidnapping and murder of Wright’s wife and son was same-transaction contextual evidence of the charged offense, and was so “blended or interwoven” with the alleged crime that it was essential to the factfinder’s understanding of the context and circumstances of the indicted offense. *See Camacho*, 864 S.W.2d at 532 (recognizing that same-transaction contextual evidence “imparts to the trier of fact information essential to understanding the context and circumstances of events which, although legally separate offenses, are blended or interwoven[,]” and that, “[a]s such, [same-transaction contextual evidence] is admissible, not for the purpose of showing character conformity, but to illuminate the nature of the crime alleged.”). Thus, this Court affirmed that the trial court appropriately admitted the contested extraneous-offense evidence as same-transaction contextual material which was pertinent to the indicted capital murder. *Camacho*, 864 S.W.2d at 532.

³ The indictment alleged that Camacho committed capital murder by intentionally killing Wright’s employee in the course of committing or attempting to commit burglary of a habitation. *Camacho*, 864 S.W.2d at 527.

This Court reached a similar conclusion in *Prible v. State*, 175 S.W.3d 724 (Tex. Crim. App. 2005), holding that evidence concerning extraneous murders was admissible as same-transaction contextual evidence. In *Prible*, the defendant fatally shot Steve Herrera and Nilda Tirado in their home, and then set fire to Tirado's body and the couch she was laying on. *Prible*, 175 S.W.3d at 727-28. Although the fire was confined to the living room area and extinguished itself, smoke from the fire filled the house and fatally asphyxiated Herrera's and Tirado's three young children. *Id.* The State charged Prible with the capital murder of Herrera and Tirado, but at trial sought to introduce evidence of the three children's deaths, as well; the trial court admitted the State's proffered extraneous-offense evidence over Prible's Rule 404(b) objection. *Prible*, 175 S.W.3d at 727-28, 731. Recognizing that offenses are not committed in a vacuum, generally, and that, in that particular case, evidence of the children's deaths was necessary for the jury to fully understand the crime scene and the circumstances and consequences of Prible's actions, this Court concluded that the extraneous-offense evidence of the three children's deaths was so connected to the murders of Herrera and Tirado that "they formed an indivisible criminal transaction." *Prible*, 175 S.W.3d at 732. Hence, this Court affirmed that the trial court properly admitted the State's evidence concerning the children's deaths as same-transaction contextual evidence. *Prible*, 175 S.W.3d at 732.

Like in *Camacho* and *Prible*, the evidence in this case concerning Cassie's murder was inextricably interwoven with the evidence pertaining to Cassie's kidnapping and Jimmy's murder, and, thus, was necessary for the jury to fully understand and contextualize the charged offense. Consequently, the trial court appropriately admitted the State's evidence of Cassie's demise as same-transaction contextual evidence. *See Camacho*, 864 S.W.2d at 531-53; *see also Prible*, 175 S.W.3d at 731-32; *Santellan*, 939 S.W.2d at 168.

In sum, then, because the record sufficiently establishes Appellant's responsibility for Cassie's murder and, so, shows that the extraneous-offense evidence of Cassie's murder was relevant, the Fourteenth Court of Appeals erred by failing to consider whether that evidence was admissible under Rule 404(b) for any or all of the above-described non-character-conformity purposes.

This Court should sustain the State's second ground for review.

ARGUMENT FOR THIRD GROUND FOR REVIEW

The Fourteenth Court of Appeals failed to conduct a meaningful assessment of whether, per Texas Rule of Evidence 403, the probative value of the extraneous-offense evidence of Cassie's murder was substantially outweighed by the danger of unfair prejudice.

Similar to the State's second ground for review, because the Fourteenth Court of Appeals erroneously determined from the outset that insufficient evidence connects Appellant to Cassie's murder to make that extraneous crime relevant to

the charged offense, the appellate court failed to conduct any meaningful assessment of whether the probative value of the extraneous-offense evidence was substantially outweighed by the danger of unfair prejudice, pursuant to Rule of Evidence 403. *See Inthalangsy*, 610 S.W.3d at 146 (finding that the “inherent[]” prejudice of the evidence of Cassie’s murder “was unfair and substantially outweighed the non-existent probative value of Cassie’s death relative to the charge alleged and the elements thereof.”). However, because, again, any reasonable factfinder could conclude that Appellant is criminally liable for Cassie’s murder, as explained above, the appellate court should have engaged in a proper, thorough Rule 403 analysis.

Rule 403 permits the trial court to exclude relevant evidence if the court determines that the probative value of that evidence is substantially outweighed by the danger of unfair prejudice. TEX. R. EVID. 403. A trial court undertaking a Rule 403 analysis must balance the following considerations: (1) the inherent probative force of the proffered evidence; and (2) the strength of the proponent’s need for the evidence to prove a fact at issue, including whether the proponent has access to other probative evidence which could establish the disputed fact; against (3) any tendency of the evidence to suggest decision on an improper basis; (4) any tendency of the evidence to confuse or distract the factfinder from the main issues in the case; (5) the likelihood that the jury would give the evidence undue weight,

or that the evidence would impress upon the jury “in some irrational but nevertheless indelible way”; and (6) the likelihood that presentation of the proffered evidence would consume an inordinate amount of time or merely repeat evidence already admitted. *Gigliobianco v. State*, 210 S.W.3d 637, 641-42 (Tex. Crim. App. 2006).

In light of the record in this case, the trial court could have reasonably determined, first, that the probative value of the extraneous-offense evidence regarding Cassie’s murder was high, and then that that high probative value far outweighed the danger of unfair prejudice. *See Inthalangsy*, 610 S.W.3d at 150 (Christopher, J., dissenting). Specifically, the probative value of the evidence of Cassie’s murder was high because, as described above, the evidence was important to establishing the elements of kidnapping that Appellant restrained Cassie without her consent, and that Appellant intended to prevent Cassie’s liberation by using deadly force against her. This is particularly so because those elements of kidnapping were contested at trial and Frank’s limited eyewitness testimony did not demonstrate that Appellant and Amalinh used obvious force against Cassie when they abducted her from Frank’s house. *See Inthalangsy*, 610 S.W.3d at 150 (Christopher, J., dissenting) (explaining that the evidence of Cassie’s murder was highly probative of the contested elements of kidnapping because “the limited eyewitness testimony did not establish any obvious uses of force during the initial

stages of the kidnapping.”). Hence, “[t]he extraneous murder was...important to establishing that Cassie was still taken against her will[,]” and that Appellant and Amalinh used deadly force to prevent Cassie’s liberation once they removed her from Frank’s residence. *See Inthalangsy*, 610 S.W.3d at 150 (Christopher, J., dissenting).

Further, the trial court could have reasonably determined that there was little danger that the extraneous-offense evidence would distract or confuse the jury, or consume an inordinate amount of time, given that Jimmy’s and Cassie’s murders were inextricably intertwined and that the State presented relatively few witnesses and photographs to prove the extraneous murder. *See* (RR IV – 227-42); (RR V – 12-27, 33-58); *Inthalangsy*, 610 S.W.3d at 150 (Christopher, J., dissenting). Relatedly, the trial court could also have concluded that the amount and nature of the extraneous-offense evidence would not affect the jury in an irrational way, given that the State purposely offered only a few, non-inflammatory photographs of Cassie’s body and where it was discovered; the State refrained from offering graphic, close-up photographs of Cassie’s body or face; and the State did not present any photographs from Cassie’s autopsy. *See* (RR III – 24-25); (SX 242-47, 251); *Inthalangsy*, 610 S.W.3d at 150 (Christopher, J., dissenting).

Hence, in light of these considerations and the record, the trial court reasonably concluded that, per Rule 403, the probative value of the extraneous-

offense evidence of Cassie’s murder was not substantially outweighed by the danger of unfair prejudice, and the Fourteenth Court of Appeals erred in holding otherwise. *See Segundo v. State*, 270 S.W.3d 79, 90 (Tex. Crim. App. 2008) (finding that the probative value of an extraneous rape and murder was not substantially outweighed by the danger of unfair prejudice, under Rule 403, when the State spent time proving the extraneous offense, but did not emphasize “the gory details of the extraneous murder[,]” thereby mitigating the likelihood that the jury would make an irrational or emotional decision); *see also Johnson v. State*, 68 S.W.3d 644, 651 (Tex. Crim. App. 2002) (holding that the probative value of extraneous murders was not substantially outweighed by the danger of unfair prejudice when the extraneous crimes “were highly probative because they placed the primary offense in context of the scheme carried out that night[,]” and the extraneous-offense evidence was not unfairly prejudicial).

This Court should sustain the State’s third ground for review.

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CONCLUSION AND PRAYER

For the foregoing reasons, the State respectfully submits that the Fourteenth Court of Appeals erroneously concluded that the State’s extraneous-offense evidence concerning Cassie’s murder was irrelevant because insufficient evidence proved that Appellant committed that crime. In doing so, the Fourteenth Court of

Appeals improperly substituted its own judgment for that of the trial court concerning the relevancy of the evidence and misapplied Texas Rules of Evidence 401 and 402. Premised upon that erroneous conclusion, the Fourteenth Court of Appeals then failed to assess whether the extraneous-offense evidence was admissible for non-character-conformity purposes, per Rule of Evidence 404(b). Lastly, again based on its determination that the extraneous-offense evidence was entirely irrelevant, the Fourteenth Court of Appeals presumed that the prejudicial effect of the evidence substantially outweighed its probative value, without conducting a proper, meaningful examination of that issue, per Rule of Evidence 403. Accordingly, the State prays that this Court will reverse the decisions of the Fourteenth Court of Appeals on those matters and will remand the case to that appellate court to consider Appellant's remaining points of error.

Respectfully submitted,

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